

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SANDY J. BATTISTA,)
)
)
Plaintiff,)
v.)
HAROLD W. CLARKE,)
KATHLEEN M. DENNEHY,) Civil Action No.
ROBERT MURPHY,) 05-11456-DPW
TERRE K. MARSHALL, and)
SUSAN J. MARTIN, in their official and individual)
capacities;)
)
Defendants.)
)

JOINT STATUS REPORT

Pursuant to the District Court's order of December 10, 2007, the parties submit this joint status report.

The parties have not engaged in settlement discussions. The parties are currently on track to complete discovery by September 26, 2008. Dr. Stephen Levine's evaluation and report on behalf of Defendants was submitted as of June 25, 2008, pursuant to Dr. Levine's meeting with Ms. Battista on June 4, 2008.

Dr. Levine's report confirms Ms. Battista's previous diagnosis of Gender Identity Disorder ("GID"). Several of the Defendants have confirmed during their depositions that there is no longer any dispute as to Ms. Battista's GID diagnosis.

The parties note that several discovery issues and pending motions will require further attention from the Court:

1. Plaintiff's position is that Dr. Levine's report on behalf of the Defendants settles the matter of treatment going forward as Dr. Levine's report dissolves the grounds for

Defendants' withholding of prescribed medical treatment. To that end, Plaintiff intends shortly to file a renewed motion for a preliminary injunction ordering the DOC to authorize the implementation of the treatment she was prescribed in April 2005.

2. Defendants' position is that Dr. Levine's evaluation of plaintiff confirms the diagnosis of GID. However, Dr. Levine's evaluation leaves open, for the present, the issue of providing plaintiff with hormone treatment, indicating that while hormone treatment is a possibility, it should be considered in the context of psychotherapy. Dr. Levine also raises a concern that there could be medical complications in treating plaintiff, who suffers from Congenital Adrenal Hyperplasia ("CAH"), with female hormones. Presently, Dr. Levine and Dr. Zakai, M.D., the chief psychiatrist of MHM, the DOC's mental health services vendor, are preparing a treatment plan for plaintiff's GID. Defendants further state that in his evaluation, Dr. Levine raises a concern for plaintiff's safety within the population of sex offenders confined to the Treatment Center where plaintiff's feminization as a result of hormone treatment may lead to the sexual abuse of plaintiff by other sex offenders confined to the facility. As a result of Dr. Levine's evaluation, the DOC has commenced a review of the safety and security concerns raised by plaintiff's potential treatment with female hormones. However, based on the recent deposition testimony of Treatment Center Superintendent Robert Murphy, it appears that there are significant concerns regarding plaintiff's safety at the Treatment Center if treatment with female hormones is commenced.
3. Plaintiff plans to file a motion for extension of time in order to identify a rebuttal expert. It is clear that there will be no further need for expert testimony as to the GID diagnosis. It is unclear what the Defendants' stand is as to the treatment plan, and it is therefore

unclear whether a rebuttal expert will even be necessary. Plaintiff anticipates resolution of its renewed motion for preliminary injunction will inform this question.

4. Defendants have invoked attorney-client privilege in regard to certain documents that were produced by Defendants to Ms. Battista. The parties are in disagreement as to whether the documents at issue are covered by the doctrine of attorney-client privilege, and if so, whether any such privilege has been waived. Plaintiff intends to file a motion soon asking the Court to rule on the issue.
5. Plaintiff has concerns about the potential loss of relevant electronic evidence by the DOC. Plaintiff is currently exploring the issue in discovery and it may be the subject of future motion practice.

Dated: August 5, 2008

Respectfully submitted,

SANDY J. BATTISTA
by her attorneys,

/s/ Ada Y. Sheng
Emily Smith-Lee (BBO# 634223)
Neal E. Minahan (BBO#661371)
Dana McSherry (BBO #664430)
Ada Sheng (BBO#664775)
McDermott Will & Emery LLP
28 State Street
Boston, MA 02109
tel: 617.535.4000
fax: 617.535.3800

DEFENDANTS,
by their attorneys,

/s/ Richard McFarland
Richard McFarland (BBO#542278)
Legal Division
Department of Correction
70 Franklin Street , Suite 600
Boston, MA 02110
(617) 727-3300 ext. 132

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on August 5, 2008.

/s/ Ada Y. Sheng

Ada Y. Sheng